

Re: Amendment and Response to Final Office Action Mailed July 28, 2005
Serial No.: 10/648,174
Filing Date: August 26, 2003

II. REMARKS

Claims 1-16 and 24-49 are currently pending. The Office Action allowed Claims 2 and 24-37; objected to Claims 6, 12 and 44-48; and rejected Claims 1, 3-5, 7-11, 13-16, 38-43 and 49. By the foregoing amendments, Applicant amended Claims 1, 11, 14 and 38 pursuant to 37 C.F.R. § 1.116 to further clarify the claimed invention or, in the alternative, to place the rejected claims in better form for consideration on appeal. Pursuant to 37 C.F.R. § 1.121, no new matter is introduced by these amendments. Applicant believes that Claims 1-16 and 24-49 are now in condition for allowance.

Please note that Applicant's remarks are presented in the order in which the issues were raised in the Office Action for the convenience and reference of the Examiner. In addition, Applicant requests that the Examiner carefully review any references discussed below to ensure that Applicant's understanding and discussion of the references, if any, is consistent with the Examiner. Further, the following remarks are not intended to be an exhaustive enumeration of the distinctions between any cited references and the claimed invention. Rather, the distinctions identified and discussed below are presented solely by way of example to illustrate some of the differences between the claimed invention and the cited references.

A. Rejection under 35 U.S.C. § 102(a)

The Office Action rejected Claims 1, 3-5, 7-11, 13-16, 38-43 and 49 under 35 U.S.C. § 102(a) as being anticipated by United States Patent No. 6,427,963 issued to Davis, et al. Applicant

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respectfully traverse this rejection because, *inter alia*, the Davis patent does not disclose each and every element of Claims 1, 3-5, 7-11, 13-16, 38-43 and 49.

1. Claims 1, 3-10, 13 and 49

In order to further clarify the claimed invention or, in the alternative, to place the rejected claims in better form for consideration on appeal, Applicant amended Claim 1. For example, Applicant amended Claim 1 to provide “the arm being separate and distinct from the bracket” and “the link including a first portion pivotally connected to the arm and a second portion pivotally connected to the bracket.” Thus, Claim 1 now positively recites the arm is separate and distinct from the bracket and the link includes a first portion that is pivotally connected to the arm and a second portion that is pivotally connected to the bracket. The Davis patent, however, does not disclose an arm that is separate and distinct from the bracket or a link that includes a first portion pivotally connected to the arm and a second portion pivotally connected to the bracket.

Because the Davis patent does not disclose each and every element of Claim 1, Applicant respectfully requests that this Section 102(a) rejection be withdrawn. Applicant also requests that the rejection of Claims 3-10, 13 and 49 be withdrawn at least because these claims are dependent upon amended Claim 1. Consequently, Applicant requests that this rejection of Claims 1, 3-10, 13 and 49 be withdrawn.

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2. Claim 11

In order to further clarify the claimed invention or, in the alternative, to place the rejected claims in better form for consideration on appeal, Applicant amended Claim 11. In particular, Applicant amended Claim 11 to include a claim limitation from allowed Claim 2. Specifically, Applicant amended Claim 11 to provide “wherein the wheel assembly includes an axle that is disposed through an opening in the arm and a slot in the bracket, the axle being movable within the slot when the adjustment assembly moves between the first position and the second position.” Thus, Claim 11 now positively recites the wheel assembly includes an axle that is disposed through an opening in the arm and a slot in the bracket, and the axle is movable within the slot when the adjustment assembly moves between the first position and the second position. Accordingly, Applicant respectfully requests that this Section 102(a) rejection of Claim 11 be withdrawn.

3. Claim 12

The Office Action Summary stated that Claim 12 was objected to, but did not provide any reasoning or explanation in the Office Action. Applicant believes that this was a typographical error and Claim 12 should be indicated as being allowed. Applicant respectfully requests that the Examiner explain why Claim 12 was objected to if the claim is not allowable.

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4. Claims 14-16

In order to further clarify the claimed invention or, in the alternative, to place the rejected claims in better form for consideration on appeal, Applicant amended Claim 14. For example, Applicant amended Claim 14 to provide “each arm of the pair of arms being separate and distinct from the bracket” and “each link including a first portion connected to one of the arms and a second portion connected to the bracket.” Thus, Claim 14 now positively recites that each arm of the pair of arms is separate and distinct from the bracket and each link includes a first portion that is connected to one of the arms and a second portion that is connected to the bracket. The Davis patent, however, does not disclose a pair of arms that are separate and distinct from the bracket or a link that includes a first portion connected to one of a pair of arms and a second portion connected to a bracket.

Because the Davis patent does not disclose each and every element of Claim 14, Applicant respectfully requests that this Section 102(a) rejection be withdrawn. Applicant also requests that the rejection of Claims 15 and 16 be withdrawn at least because these claims are dependent upon amended Claim 14. Consequently, Applicant requests that this rejection of Claims 14-16 be withdrawn.

5. Claims 38-43

In order to further clarify the claimed invention or, in the alternative, to place the rejected claims in better form for consideration on appeal, Applicant amended Claim 38. For example, Applicant amended Claim 38 to provide “the brace being separate and distinct from the bracket” and

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“the link including a first portion connected to the brace and a second portion connected to the bracket.” Thus, Claim 38 now positively recites the brace is separate and distinct from the bracket and the link includes a first portion connected to the brace and a second portion connected to the bracket. The Davis patent, however, does not disclose a brace that is separate and distinct from the bracket or a link that includes a first portion connected to a brace and a second portion connected to a bracket.

Because the Davis patent does not disclose each and every element of Claim 38, Applicant respectfully requests that this Section 102(a) rejection be withdrawn. Applicant also requests that the rejection of Claims 39-43 be withdrawn at least because these claims are dependent upon amended Claim 38. Consequently, Applicant requests that this rejection of Claims 38-43 be withdrawn.

B. Response to the Double Patenting Rejections

The Office Action rejected Claims 1 and 38 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claim 1 of United States Patent No. 6,656,065 and Claim 1 of U.S. Patent No. 6,432,003. The Office Action stated that although the conflicting claims are not identical, they are not patentably distinct from each other because the claims in the application are simply broader than the patent claims and clearly “read” on the claims in the patent.

Applicant respectfully traverses this rejection. As stated in the Office Action, however, a timely filed terminal disclaimer in compliance with 37 C.F.R. § 1.321(c) may be used to overcome

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an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application.

Accordingly, in order to expedite receiving a Notice of Allowance, Applicant submits herewith a terminal disclaimer in compliance with 37 C.F.R. § 1.321(c) to Obviate any Double Patenting Rejection in view of United States Patent No. 6,656,065 under the judicially created doctrine of obviousness-type double patenting. Applicant also submits herewith a terminal disclaimer in compliance with 37 C.F.R. § 1.321(c) to Obviate any Double Patenting Rejection in view of United States Patent Nos. 6,432,003 under the judicially created doctrine of obviousness-type double patenting. In addition, Applicant submits herewith three Certificates under 37 C.F.R. § 3.73(b) establishing that U.S. Patent Nos. 6,656,065 and 6,432,003, and this application are commonly owned by the Assignee. Accordingly, Applicant requests that this double patenting rejection be withdrawn.

In particular, the first Certificate under 37 C.F.R. § 3.73(b) establishes that Assignee Lifetime Products, Inc. is the owner of U.S. Patent No. 6,656,065 by an assignment from the inventor to the Assignee recorded at reel/frame 012659/0322. The second Certificate under 37 C.F.R. § 3.73(b) establishes that Assignee Lifetime Products, Inc. is the owner of U.S. Patent No. 6,432,003 by an assignment from the inventor to the Assignee recorded at reel/frame 011022/0538. The third Certificate under 37 C.F.R. § 3.73(b) establishes that Assignee Lifetime Products, Inc. is the owner of this application by an assignment from the inventor to the Assignee recorded at reel/frame 014290/0138. This terminal disclaimer is accompanied by the fee set forth in 37 C.F.R. § 1.20(d) in

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the amount of \$130.00. Please charge any underpayment or credit any overpayment to Deposit Account No. 23-3178. Accordingly, Applicant requests that this rejection be withdrawn.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the claimed invention is not made obvious in view of the cited references and allowance of Claims 1-16 and 24-49 is respectfully solicited.


The undersigned has made a good faith effort to respond to all of the rejections in the case and to place the claims in condition for immediate allowance. Nevertheless, if any unresolved issues remain, the Examiner is invited to contact the undersigned by telephone to discuss those issues so that a Notice of Allowance can be mailed at the earliest possible date.

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The Commissioner is authorized to charge payment of any fees associated with this communication or credit any overpayment to Deposit Account No. 23-3178.

Respectfully submitted,

Dated: November 21, 2005

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